

1 E. MARTIN ESTRADA
United States Attorney
2 DAVID M. HARRIS
Assistant United States Attorney
3 Chief, Civil Division
JOANNE S. OSINOFF
4 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
5 CHRISTINA A. MARQUEZ (Cal. Bar No. 305301)
DAVID PINCHAS (Cal. Bar No. 130751)
6 Assistant United States Attorneys
Federal Building, Suite 7516
7 300 North Los Angeles Street
Los Angeles, California 90012
8 Telephone: (213) 894-4061/2920
Facsimile: (213) 894-7819
9 E-mail: Christina.Marquez@usdoj.gov
E-mail: David.Pinchas@usdoj.gov

10 Attorneys for Federal Defendant
11 United States of America

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 Esvin Fernando Arredondo Rodriguez,
15 individually and A.F.A.J., a minor, by
her guardian ad litem, Jeffrey Hamilton,

16 Plaintiffs,

17 v.

18 United States of America,

19 Defendant.

No. 2:22-cv-02845-JLS-AFM

DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION TO EXCLUDE
TESTIMONY AND REPORT OF
PSYCHOLOGICAL EXPERT DR.
WILLIAMSON; DECLARATION OF
CHRISTINA MARQUEZ;
DECLARATION OF DAVID PINCHAS

Hearing Date: March 29, 2024
Hearing Time: 10:30 a.m.
Ctvm: 8A

Honorable Josephine Staton
United States District Judge

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT.....	2
A.	Defendant Complied With FRCP 26 and FRCP 35	2
1.	Dr. Williamson Was Timely Disclosed as a Rebuttal Expert and So Were His Psychological Examination Findings	2
2.	Even if the Court Finds Dr. Williamson’s Disclosures Were Untimely That Disclosure Date Was Substantially Justified and Harmless.....	3
B.	Dr. Williamson’s Opinion Is Reliable and Admissible Under <i>Daubert</i>	6
1.	Dr. Williamson Did Not Rely Exclusively on AI-Generated Narratives or Self-Report Measures	6
a.	Computer Based Test Interpretation.....	7
b.	The MMPI-2	8
c.	T-Scores	10
2.	Dr. Williamson Relied on More Facts and Data Than Plaintiff’s Expert Dr. Samuelson	10
3.	Dr. Williamson’s Opinions Are the Product Of Reliable Principles and Methods.....	12
4.	Dr. Williamson Reliably Applied a Comprehensive Methodology That Is the Recommended Standard in Forensic Assessment.....	12
C.	Dr. Williamson is a Qualified Expert With Comprehensive Education, Experience, and Training in Trauma and [REDACTED]	13
1.	Dr. Williamson’s Expert Qualification in Clinical Psychology and Experience with Trauma and [REDACTED]	14
2.	Dr. Williamson’s Frequent Court Testimony As An Expert And Treating Clinical Psychologist.....	17
3.	Dr. Williamson’s Awards and Recognition.....	18
III.	CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases

<i>A.A. v. Raymond</i> , 2013 WL 3816565 (E.D. Cal. July 22, 2013)	<i>passim</i>
<i>Alfen v. Toyota Motor Sales, U.S.A., Inc.</i> , 2012 WL 12930737 (C.D. Cal. Nov. 9, 2012)	4-5
<i>Amorgianos v. National R.R. Passenger Corp.</i> , 303 F.3d 256 (2nd Cir. 2002)	11-12
<i>Att’y Gen. of Okla. V. Tyson Foods, Inc.</i> , 565 F.3d 769 (10th Cir. 2009)	6
<i>Avila v. Willits Env’tl. Remediation Trust</i> , 633 F.3d 828 (9th Cir. 2011)	15
<i>Benton v. Ford Motor Co.</i> , 492 F. Supp. 2d 874 (S.D. Ohio 2007)	20
<i>Bocanegra v. Vicmar Services, Inc.</i> , 320 F.3d 581 (5th Cir. 2003)	12
<i>Cleveland v. Behemoth</i> , 2022 WL 5314770 (S.D.Cal.Oct.6, 2022)	13
<i>Confederated Tribes of Siletz Indians of Or. v. Weyerhaeuser Co.</i> , 2003 WL 23715981 (D. Or. Jan. 21, 2003)	5
<i>Ellis v. Costco Wholesale Corp.</i> , 657 F.3d 970 (9th Cir. 2011)	<i>passim</i>
<i>In re Paoli R.R. Yard PCB Litigation</i> , 35 F.3d 717 (3d Cir. 1994)	5
<i>Int’l Med. Devices, Inc. v. Cornell</i> , 2022 WL 2784806 (C.D. Cal. June 16, 2022)	4
<i>Lanard Toys Ltd. v. Novelty, Inc.</i> , 375 F. App’x 705 (9th Cir. 2010)	4
<i>Luttrell v. Novartis Pharm. Corp.</i> , 894 F. Supp. 2d 1324 (E.D. Wash. 2012)	20
<i>Mailhoit v. Home Depot U.S.A., Inc.</i> , 2013 WL 12122580 at *6 (C.D. Cal. Jan.24, 2013)	2

1	<i>McLean v. 988011 Ontario, Ltd.</i> ,	
2	224 F.3d 797 (6th Cir. 2000)	11
3	<i>Metavante Corp v. Emigrant Sav. Bank</i> ,	
4	619 F.3d 748 (7th Cir. 2010)	6
5	<i>Prod. Liab. Litig.</i> ,	
6	424 F. Supp. 3d 781 (N.D. Cal. 2020)	6
7	<i>United States v. Garcia</i> ,	
8	7 F.3d 885–90 (9th Cir.1993)	15
9	<i>United States v. Smith</i> ,	
10	520 F.3d 1097 (9th Cir. 2008)	15
11	<u>Rules</u>	
12	Federal Rule of Evidence 702	14
13	FRCP 26	2
14	FRCP 35	2
15	Rule 26	4, 5
16	Rule 35	2
17	Rule 37(b).....	5
18	Rule 702	20

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should deny Plaintiffs' *Daubert* motion as to Dr. Williamson because the motion is based on mischaracterized evidence, on Plaintiffs' incorrect assumption that Dr. Williamson relied exclusively on AI-generated narratives and self-report measures, and on a self-serving declaration from Ms. Linda Dakin-Grimm—an attorney, who is *not* an expert psychologist. Ms. Dakin-Grimm's unfounded "because I so conclude" assertions regarding Dr. Williamson's qualifications and employed methodologies are insufficient to warrant exclusion of an expert with over 25 years of experience in clinical psychology and extensive experience with trauma and [REDACTED].

Contrary to Plaintiffs' incorrect representations, Dr. Williamson relied on multiple sources of available information, including detailed multiple-hour interviews that he took of the Plaintiffs, record review, and rigorous testing. Dr. Williamson did not rely on AI-generated narratives, nor did he testify that he did. Dr. Williamson administered three different psychological tests on A.F.A.J., and he administered five different psychological tests on Mr. Arredondo. Dr. Williamson had an adequate foundation to formulate his opinions, and he reliably applied a comprehensive method, which is the recommended standard in forensic assessment.

Plaintiffs' complaints about disclosure are similarly defective as a basis for a *Daubert* motion. Dr. Williamson's opinions and psychological examination findings were timely disclosed on January 19, 2024 (the rebuttal disclosure deadline), one month before the expert discovery cut-off, several weeks before expert depositions, and seven months before the pre-trial conference. Plaintiffs have manufactured their own asserted prejudice by creating avoidable discovery disputes and by failing to supplement their initial expert reports—despite having a month to do so.

Accordingly, Defendant respectfully requests this Court deny Plaintiffs' *Daubert* Motion as to Dr. Williamson.

II. ARGUMENT

A. Defendant Complied With FRCP 26 and FRCP 35

1. Dr. Williamson Was Timely Disclosed as a Rebuttal Expert and So Were His Psychological Examination Findings

Dr. Williamson timely disclosed both his rebuttal report and his findings from Plaintiffs' medical examinations, which took place on December 20-21, 2023. *See* Plaintiffs' Exs. C and D (Dkts. 151-3, 151-4). Plaintiffs evidently contend that because Dr. Williamson performed a Rule 35 medical examination, he needed to disclose that as an initial expert disclosures. *See generally* Williamson Daubert Mot. (Dkt. 157-1) at pgs. 4-5. Rule 35 examinations are not limited to affirmative experts, however. "Courts have often authorized Rule 35 mental examinations to provide rebuttal experts with evidence to counter plaintiff's expert reports." *See Mailhoit v. Home Depot U.S.A., Inc.*, 2013 WL 12122580 at *6 (C.D. Cal. Jan.24, 2013)(citing collection of cases supporting this proposition). "Rule 35 reports are not required to be produced by the moving party *unless requested* by the opposing party or the person examined." *Id.* at *4. The "report must 'set out in detail the examiner's findings, including diagnoses, conclusions, the results of any tests.'" *Id.*

Here, Dr. Williamson conducted his psychological examinations of Plaintiffs on December 20-21, 2023.¹ Dr. Williamson had proposed earlier dates in November 2023, but the Plaintiffs were unavailable—and the Defendant sought to accommodate the Plaintiffs' availability by scheduling them at the end of December, which the Plaintiffs

¹ At 9:56 a.m., four minutes before A.F.A.J.'s medical examination was scheduled to start, A.F.A.J. was refusing the medical examination unless her guardian ad litem, Jeffrey Hamilton, and her interpreter and family friend, Bertha Cardenti could be present. Williamson Decl. ¶ 35; *see also* Marquez Decl. ¶ 8. Plaintiffs were served with the Notices of Examination on December 7, 2023, which specifically prohibited third party observers. Plaintiffs never objected to these parameters. Marquez Decl. at ¶ 7. Dr. Williamson was concerned that if Ms. Cardenti was going to be translating the entire exam that the stipulated time frame of 7 hours may not be enough. Williamson Decl. ¶ 35. Had Defendant been aware of this, the parties could have discussed these issues prior to the day of the medical examination and resolved these issues.

1 agreed to. Declaration of Dr. Williamson (“Williamson Decl.”) ¶¶ 43-44; *see also*
 2 Declaration of Christina Marquez (“Marquez Decl.”) ¶¶ 5-6. Notably, Plaintiffs never—
 3 until the night they filed their *Daubert* motion—contended that these examinations
 4 would be too late relative to the discovery cutoff, or that Dr. Williamson needed to
 5 provide their reports the next day. As a rebuttal expert, Dr. Williamson was not required
 6 to produce his Rule 35 findings regarding Plaintiffs’ medical examinations by the initial
 7 disclosure deadline of December 22, 2023, nor could he have done so, considering the
 8 medical examinations of the Plaintiffs were conducted (by the parties’ agreement no
 9 less) ***one day before*** the initial expert disclosure deadline. Williamson Decl. ¶ 45.

10 Dr. Williamson produced his psychological examination findings together with his
 11 rebuttal opinion within the expert discovery period. The expert discovery cut off was
 12 February 16, 2024, approximately a month after Dr. Williamson’s expert reports were
 13 produced. Plaintiffs thus had ample time to take expert discovery on the subject. Dr.
 14 Williamson disclosed his findings from the medical examinations, despite Plaintiffs not
 15 requesting these findings until February 12, 2024 at his deposition. *See* Pltf’s Ex.A (Dkt.
 16 158-1) at 28:2-4. Finally, Plaintiffs’ disclosure timing complaint is not a *Daubert* issue
 17 in any event.

18 In sum, Dr. Williamson timely produced this material, Plaintiffs did not timely
 19 object, and the Plaintiffs’ belated attempts to exclude their own psychological
 20 examination results are defective at every level.

21 2. Even if the Court Finds Dr. Williamson’s Disclosures Were Untimely
 22 The Disclosure Date Was Substantially Justified and Harmless

23 Further, Plaintiffs contend they have been prejudiced by the fact that Dr.
 24 Williamson was not disclosed as an affirmative expert. However, Dr. Williamson being
 25 disclosed as a rebuttal expert was both appropriate and harmless. “Among the factors
 26 that may properly guide a district court in determining whether a violation of a discovery
 27 deadline is justified or harmless are: (1) prejudice or surprise to the party against whom
 28 the evidence is offered; (2) the ability of that party to cure the prejudice; (3) the

1 likelihood of disruption of the trial; and (4) bad faith or willfulness involved in not
2 timely disclosing the evidence.” *Lanard Toys Ltd. v. Novelty, Inc.*, 375 F. App'x 705, 713
3 (9th Cir. 2010) (citing *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003)).
4 Even where a report did not comply with the requirements of Rule 26, its inclusion was
5 “substantially justified and harmless” where it was served before the expert discovery
6 cutoff, the expert's deposition, and nearly six months before the final pretrial conference.
7 *See Int’l Med. Devices, Inc. v. Cornell*, 2022 WL 2784806, at *3 (C.D. Cal. June 16,
8 2022).

9 Here, Dr. Williamson’s opinions and psychological examination findings were
10 disclosed almost a month prior to the expert discovery cut-off, several weeks prior to any
11 expert deposition, and seven months before the pre-trial conference. Plaintiffs’ expert
12 Dr. Samuelson was not foreclosed from preparing a supplemental report responding to
13 Dr. Williamson’s opinions or psychological examination findings. Courts in the Central
14 District of California (and elsewhere in the 9th Circuit) have regularly allowed experts to
15 submit supplemental reports to address arguments raised for the first time in a rebuttal
16 expert report. *See Int’l Med. Devices, Inc.*, 2022 WL 2784806, at *3 (citing *Medtronic,*
17 *Inc. v. Edward Lifesciences Corp.*, 2013 WL 12131746, at *5 (C.D. Cal. July 24, 2013)
18 (declining to strike portions of a supplemental expert report that simply “rebut the new
19 non-infringement theories” that were raised for the first time on rebuttal)); *see also Alfen*
20 *v. Toyota Motor Sales, U.S.A., Inc.*, 2012 WL 12930737, at *3 (C.D. Cal. Nov. 9, 2012)
21 (“[T]he sur-rebuttal reports address issues raised by Toyota's rebuttal expert reports
22 Thus, the reports are proper subjects for rebuttal expert testimony.”); *Confederated*
23 *Tribes of Siletz Indians of Or. v. Weyerhaeuser Co.*, 2003 WL 23715981, at *2 (D. Or.
24 Jan. 21, 2003) (“The supplemental expert testimony was generated in direct response to
25 Defendant's attack upon the original expert reports.”).

26 Additionally, Plaintiffs’ counsel could have elicited Dr. Samuelson’s rebuttal
27 opinions at her deposition. Plaintiffs cannot manufacture prejudice by their own failure
28 to cure any prejudice when they had sufficient opportunity to do so. *See In re Paoli R.R.*

1 *Yard PCB Litigation*, 35 F.3d 717 (3d Cir. 1994) (finding abuse of discretion where the
 2 district court excluded an expert witness as a Rule 37(b) sanction where prejudice could
 3 have been easily cured since the plaintiffs' expert missed the deadline by only a month, 4
 4 months remained before trial, so there was enough time to depose the expert without
 5 disrupting the trial date). Here, Plaintiffs have affirmatively sought to avoid curing their
 6 claimed prejudice. At the meet and confer conference on March 4, 2024 (which
 7 addressed the Plaintiffs' failure to meet and confer prior to filing their *Daubert* motions),
 8 Defendant informed Plaintiffs that Plaintiffs' psychological expert, Dr. Samuelson, could
 9 prepare a supplemental report if they wanted, with the Court's approval of course. *See*
 10 *Marquez Decl.* at Ex. 5. But Plaintiffs declined to resolve their claims of prejudice that
 11 way, citing alleged budgetary constraints on their law firm, Milbank LLP, which they
 12 contended was not able to afford such a supplemental report. *See id.*

13 Plaintiffs also contend that they were prejudiced because they did not receive the
 14 underlying data that Dr. Williamson relied on. Williamson *Daubert Mot.* 9-10. Again,
 15 this is another example of Plaintiffs fabricating their own claimed prejudice and
 16 mischaracterizing the facts.² The entirety of Dr. Williamson's expert file was produced
 17 by January 30, 2024, almost two weeks prior to his deposition, apart from the redacted
 18 test questions, which were the subject of Defendant's *Ex Parte* Application (Dkt.141).
 19 *See Marquez Decl.* at Ex.2. Plaintiffs could have received these test questions at the
 20 same time as Dr. Williamson's other materials, or obtained the testing materials from Dr.
 21 Samuelson, but they refused to compromise. Even Dr. Samuelson acknowledged the
 22 ethical concerns with producing the copyrighted testing materials. *See Pinchas Decl.* at

23 ² Plaintiffs contend that Dr. Williamson's report failed to comply with Rule 26
 24 because he did not produce the materials underlying his opinions and did not include in
 25 his list of testimony the instances where he testified in immigration court. Williamson
 26 *Daubert Mot.* at pgs. 9-10. This argument hypocritical, considering Defendants
 27 repeatedly had to ask for Dr. Samuelson's entire expert file and did not receive the
 28 entirety of the file from the Plaintiffs until two days prior to her deposition. *Marquez Decl.* at ¶¶ 18-20, Ex.4. Further, Dr. Samuelson's report failed to include her CV and the list of prior testimony, which is required under Rule 26. *Marquez Decl.* at ¶ 9. In sum, if Dr. Williamson were excluded on this basis, then *a fortiori* Plaintiffs' expert Dr. Samuelson would also need to be excluded, because Plaintiffs were much less timely in disclosing Dr. Samuelson's file.

Ex. 2 (Samuelson Depo at 29-31). Rather, Plaintiffs took an unreasonable position, attempting to bully the Defendants' expert into disregarding his ethical obligations. And in any event, they were able to depose Dr. Williamson on this subject. Accordingly, this Plaintiffs' motion lacks any merit on this ground.

B. Dr. Williamson's Opinion Is Reliable and Admissible Under *Daubert*

The Ninth Circuit has placed great emphasis on *Daubert*'s admonition that a district court should conduct the analysis "with a 'liberal thrust' favoring admission." *In re Viagra (Sildenafil Citrate) & Cialis (Tadalafil) Prod. Liab. Litig.*, 424 F. Supp. 3d 781, 790 (N.D. Cal. 2020)(citing *Messick v. Novartis Pharmaceuticals Corp.*, 747 F.3d 1193, 1196 (quoting *Daubert*, 509 U.S. at 588)). Additionally, the usual concerns of the rule—keeping unreliable expert testimony from the jury—are not present in a bench trial, and this factor must be taken into account when determining admissibility. *See Metavante Corp v. Emigrant Sav. Bank*, 619 F.3d 748, 760 (7th Cir. 2010); *see also Att'y Gen. of Okla. V. Tyson Foods, Inc.*, 565 F.3d 769, 779 (10th Cir. 2009)("the usual concerns regarding unreliable expert testimony reaching a jury obviously do not arise...[in] a bench trial...[t]hus the 'scope of [the court's] review is quite narrow.'").

"A trial court has broad latitude not only in determining whether an expert's testimony is reliable, but also in deciding how to determine the testimony's reliability." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011) (citing *Kumho*, 526 U.S. at 152).

1. Dr. Williamson Did Not Rely Exclusively on AI-Generated Narratives or Self-Report Measures

Dr. Williamson prepared two expert reports in this case for both Plaintiffs. In doing so, he relied on multiple sources of information, and followed well-established professional guidelines. *See* Williamson Decl. at ¶ 24. In addition to conducting detailed in-person interviews and record reviews, Dr. Williamson administered psychological tests to both Plaintiffs. *Id.* at ¶ 25. Dr. Williamson administered both simple self-report tests, which do not have validity indicators, and other psychological tests, that have

1 embedded validity indicators.³ *Id.* at ¶¶ 25-27.

2 More specifically, for Mr. Arredondo, Dr. Williamson administered the Minnesota
3 Multiphasic Inventory-2 (MMPI-2) and the Trauma Symptom Inventory-2 (TSI-2),
4 which have embedded validity indicators. *Id.* at ¶ 26. In addition, to the MMPI-2 and
5 TSI-2, Dr. Williamson also administered three other checklist tests to Mr. Arredondo:
6 the Beck Anxiety Inventory (BAI), the Beck Depression Inventory, second edition (BDI-
7 2), and the Beck Hopelessness Scale (BHS). *Id.* at ¶ 27. These are self-report tests that
8 do not have validity indicators, and therefore, are best used in conjunction with other
9 available tests and other sources such as a clinical interview and records. *Id.* at ¶ 27.

10 As for A.F.A.J., all the tests Dr. Williamson administered contained validity
11 indicators, which included the Minnesota Multiphasic Personality Inventory, Adolescent
12 version (MMPI-A), the Millon Adolescent Clinical Inventory (MACI), and the TSI-2.
13 The TSI-2 was administered to both Plaintiffs.⁴ *Id.* at ¶ 26.

14 *a. Computer Based Test Interpretation*

15 In imagining “AI” issues, Plaintiffs mischaracterize Dr. Williamson’s deposition
16 testimony. Dr. Williamson never admitted to using “AI-generated narratives” and he did
17 not refer to any of his expert reports as “AI.” *See* Williamson Decl. at ¶ 30; *see also*
18 Pltfs’ Ex.A (Dkt.158-1) at 150. Dr. Williamson relied, *in part*, on Computer Based Test
19 Interpretation (CBTI). *See* Williamson Decl. at ¶ 30. Contrary to Plaintiffs’ contention
20 that Dr. Williamson testified that “wide swaths of his report are AI-generated,” only
21 three and a half pages of CBTI interpretation make up A.F.A.J.’s report and only three
22

23 ³ While psychological tests that measure personality and emotions generally
24 involve self-report measures, there are also psychological tests with embedded validity
25 indicators. *See* Williamson Decl. at ¶ 25. Validity indicators in this context refer to
26 specific scales and subscales within psychological tests that measure issues such as the
27 test-taker’s ability to understand the test questions, overreporting, underreporting,
28 malingering, and other issues. *Id.*

⁴ Plaintiffs’ Ex. T at pg. 221 (Dkt. 151-20) indicates that “psychological research
and legal review suggest that the TSI/TSI-2 is admissible as an instrument under the
Daubert Standard. Later in the article, it states “the literature the past 25 years has
generally demonstrated the utility of TSI/TSI-2 in identifying [REDACTED] symptomatology in
clinical settings and the general acceptance of the instrument use in those settings.
See id. at pg. 224 (emphasis added).

fourths of one page of Mr. Arredondo's report was a computer-generated validity report. *Id.* at 31. CBTI—as opposed to AI—is based on a particular norm group that has been evaluated by experts. *Id.* at 30. From those norm groups, hypotheses are generated. *Id.*

Dr. Williamson emphasized repeatedly in his deposition that he only considered the CBTIs as one data point in his overall workup. *See* Pinchas Decl. at Ex. 1 (Williamson Depo) at 153-155 (Emphasis added).

Plaintiffs' counsel have completely disregarded Dr. Williamson's actual testimony and reports on this point. In imagining and then mechanically repeating their incorrect arguments about a menacing AI threat, Plaintiffs' counsel have not identified any legitimate basis for precluding Dr. Williams' testimony.

b. The MMPI-2

Additionally, Dr. Williamson did not rely on an outmoded version of the MMPI, nor did he admit that the MMPI-2 was outdated. The MMPI-2 is widely considered to be an outstanding personality inventory, and it may be the most researched personality test in the history of psychology. *See* Williamson Decl. ¶ 38. There are literally decades of research that support its utility in many domains. *Id.* It contains 567 questions and is substantially longer than its progeny, the Personality Assessment Inventory, the MMPI-2, Revised Format (RF), and the MMPI-3, all of which have 200+ fewer items. *Id.* Attempts have been made to shorten the test to improve its efficiency (i.e. speed of application), but with unclear results. *Id.* In fact, Plaintiffs' Exhibit N (Dkt. 151-14) supports this. It states in pertinent part:

“Although the MMPI-2-RF and MMPI-3 have been released, they are not included in the present case study due to differences in items between the MMPI-2 and the MMPI-2-RF and MMPI-3, limited research on the MMPI-3, and as the MMPI-2 remains the most widely administered empirically validated tests of personality and psychopathology in use today.”

See Dkt. 151-14 at pg. 200 (emphasis added).

Within the forensic and personality fields, there have been substantial disagreements about the comparative efficacy of later, shorter versions of the original MMPI/MMPI-2. *See* Williamson Decl. ¶ 39. Indeed, many critics have pointed out that

1 the MMPI-2 had similar methodology as the original MMPI, while the MMPI-2-Revised
2 Format (MMPI-2-RF) and MMPI-3⁵ made some substantial methodological changes,
3 enough to make it a very different type of test. *Id.* The result is that some MMPI experts
4 feel that using the same general name, the MMPI, for all the versions is very misleading.
5 *Id.* They are, in fact, very different tests methodologically and the progeny are not
6 simply sequels or improvements. *Id.* Accordingly, the MMPI-2- RF and MMPI-3 have
7 been criticized. *Id.* For example, in Michael Parisien’s article titled *Empirical vs.*
8 *Factorial Validity in Personality Inventories: The MMPI-2 and the Restructured RC*
9 *Scales*, 2021 it states in pertinent part:

10 [T]he MMPI-2, the University of Minnesota Press Publishers and their
11 publishers and their distributors Pearson Assessments recently released an
12 “MMPI-3” (emerged from the MMPI-2-RF), which basically has nothing to
13 do with MMPI/MMPI-2.”

14

15 “For the moment, the RC scales, resulting from a theoretical and factorial
16 strategy are no match for the empirical psychometric strategy that made and
17 still makes the MMPI/MMPI-2 instruments the nec plus ultra of personality
18 inventories used in clinical and psycho-legal contexts.”

19 See Williamson Decl. at Ex. 1.

20 There is debate in the field as to which tests are appropriate, without any
21 consensus. For example, the Federal Aviation Administration (FAA), after a
22 methodological analysis of its massive database of previous test administrations, has
23 determined that Airline Pilots, FAA Air Traffic Control Specialists (ATCSs), Federal
24 Air Marshals, and NASA astronauts and therefore the public, is better served by
25 continuing to use the MMPI-2. The FAA statement noted:

26 “When the MMPI-2-RF was released, there was consensus among MMPI
27 experts that the MMPI-2-RF was a completely new test and not a revision of
28 the MMPI/MMPI-2. Indeed, Ben-Porath (2017, p. 277) asserted that, “the
29 MMPI-2-RF was introduced as an alternative to, rather than a replacement
30 for the MMPI-2.”

31 ...

32 “In summary: The MMPI and MMPI-2 have accumulated seven decades of

⁵ Dr. Samuelson used the MMPI-3.

validation with pilots and other aerospace personnel. Unlike the MMPI-2, the “MMPI-3” is simply a revision of the MMPI-2-RF. Valid pilot and ATCS norms are available for the MMPI-2 but not for the MMPI-2-RF or the “MMPI-3.” For these reasons, the FAA will continue to require the use of the MMPI-2 for pilot and ATCS assessments. The MMPI-2-RF and “MMPI-3” are not acceptable substitutes for FAA assessments. This policy is in accordance with Guideline #8 of the Professional Practice Guidelines for Occupationally-Mandated Psychological Evaluations published by APA (2018, p. 193), which notes: “Psychologists seek to select and rely on assessment tools validated for use with a population appropriate to the evaluation.”

See Williamson Decl. at Ex. 2; see also Pinchas Decl. at Ex. 1 (Williamson Depo) at 182-185. While there is no consensus in the field as to which test is appropriate, there is a reflex among less experienced clinicians to use the latest version of a test or accept what a new tests creator says about it, independent of the other sources of research on it or methodological changes. *See Williamson Decl. at ¶ 41.* Many professional psychological organizations endorsed a position statement in 2018 highlighting the importance of not simply selecting the newest version of a test or claiming earlier versions are no longer valid. *Id. at Ex.3*

c. T-Scores

Dr. Williamson does not simply recite the T-scores that were reported. Computer scored tests are used routinely in forensic assessments. *See Williamson Decl. at ¶ 28.* In this case both psychological experts used computer scored tests. *Id.* The tests were scored by different companies including Pearson Assessments (Five tests: BAI, BDI-2, BHS, MACI, MMPI-A), Psychological Assessment Resources, (One test: TSI-2), and the Caldwell Reports (One test: MMPI-2). *Id.* These scores were used to generate hypotheses to use in conjunction with other evidence, including other tests, records, and interviews. *Id. at ¶ 29.*

2. Dr. Williamson Relied on More Facts and Data Than Plaintiff’s Expert Dr. Samuelson

Dr. Williamson relied on sufficient facts and data in formulating his opinion. Regardless, however, weaknesses in the factual basis of an expert witness' opinion “bear on the weight of the evidence rather than on its admissibility.” *McLean v. 988011*

1 *Ontario, Ltd.* 224 F.3d 797, 801 (6th Cir. 2000); *Amorgianos v. National R.R. Passenger*
2 *Corp.* 303 F.3d 256, 267 (2nd Cir. 2002); *Bocanegra v. Vicmar Services, Inc.* 320 F.3d
3 581, 589 (5th Cir. 2003) (Court found that unknown quality and quantity of marijuana
4 ingested by driver affected weight given to toxicologist's testimony regarding effect on
5 cognitive functions, not admissibility”).

6 Dr. Williamson formulated his opinions by assessing an overall body of
7 knowledge, which included extensive psychological testing, in-person interviews of
8 Plaintiffs, and a record review of various documents. *See* Williamson Decl. ¶¶ 24-33.
9 Dr. Williamson conducted detailed clinical interviews with both plaintiffs, 3.25 hours for
10 A.F.A.J. and 3.75 hours for Mr. Arredondo. *Id.* at ¶ 32. This was separate from, and in
11 addition to, the face-to-face interview time. *Id.* at ¶ 36. Additionally, the interviews were
12 conducted in Spanish, as Dr. Williamson is bilingual. *Id.* In total, the medical
13 examinations for Plaintiff were approximately six (A.F.A.J.) and seven hours (Mr.
14 Arredondo). *Id.* Dr. Williamson prepared nine pages of handwritten note from each of
15 those interviews. *Id.*

16 In contrast, the Plaintiffs’ expert, Dr. Samuelson, conducted both Plaintiffs’
17 interviews with an interpreter (which slows the interview). *Id.* at ¶ 33. According to her
18 report, in the case of A.F.A.J., Dr. Samuelson’s interview with A.F.A.J. lasted *just 90*
19 *minutes total, including translation.* *Id.* Further, Dr. Samuelson used Ms. Bertha
20 Cardenti as an interpreter, who was not a certified interpreter, and represented herself to
21 Dr. Williamson during A.F.A.J.’s medical examination as a volunteer and ***family friend.***
22 *Id.* at ¶ 37. Dr. Samuelson admitted that she would have preferred a certified interpreter
23 and admitted if Ms. Cardenti was a family friend there could be bias. *See Pinchas* Decl.
24 at Ex. 2 (Samuelson Depo) at 44-45. In addition to detailed interviews and record
25 review, Dr. Williamson administered several psychological tests to both Plaintiffs. *See*
26 *supra* Section III.B.1.

27 In sum, by any such criteria, Dr. Williamson considered significantly more data
28 and a more extensive examination than did Plaintiffs’ retained expert. And in any event,

1 this is an issue going to the weight, rather than admissibility, of their testimony.

2 3. Dr. Williamson's Opinions Are the Product Of Reliable Principles
3 and Methods

4 As discussed above, Dr. Williamson's opinions are the product of a variety of
5 factors, including: (1) his review of medical documents, case background information,
6 and deposition testimony, (2) his clinical interviews with Plaintiffs, and (3) his
7 application of various clinical tests to the Plaintiffs. *See Cleveland v. Behemoth*, 2022
8 WL 5314770, at *3 (S.D.Cal.Oct.6, 2022)(denying *Daubert* motion finding that
9 psychiatrist used reliable principles and methods in his administration of the MMPI-2
10 and that his expert testimony was based on a variety of factors including: (1) his review
11 of medical documents, including medical records, employment records, and deposition
12 testimony, (2) a clinical interview with Plaintiff, and (3) various clinical tests, including
13 the MMPI-2).

14 Plaintiffs' attempt to argue that Dr. Williamson should be excluded relies on their
15 false assertion that Dr. Williamson relied exclusively on self-report measures and AI
16 generated narratives. *Daubert Mot.* at 18. As discussed *supra*, Plaintiffs are demonstrably
17 wrong.

18 4. Dr. Williamson Reliably Applied a Comprehensive Methodology
19 That Is the Recommended Standard in Forensic Assessment

20 Dr. Williamson utilized the administered psychological tests to generate
21 hypotheses to use in conjunction with other evidence, including other tests, records, and
22 extensive direct interviews. *See Williamson Decl.* at ¶ 29. Dr. Williamson also did his
23 own assessment of the test results, apart from any actuarial narrative. *Id.* This
24 comprehensive method that Dr. Williamson used is the recommended standard in
25 forensic assessment. *Id.*

26 Plaintiffs misrepresent Dr. Williamson's testimony and allege that he just copied
27 and pasted the CBTIs in his reports. *See Williamson Daubert Mot.* at 21. This is
28 disingenuous considering Plaintiffs' counsel openly acknowledged at Dr. Williamson's

1 deposition that he did not cut and paste, much less do so with no indication of what he
2 was doing:

3 Q: A peer-reviewed article widely cited in which she and her co-
4 authors state clinical users who cut and paste often with no indication that
5 they are doing so, *which is not what you did...*

6 A: I agree that if you just post the report without clarifying that it is a
7 computer-scored report then that would be one error. Another error would
8 be to take it as true. *For example, these three reports all have different*
9 *diagnostic conclusions. I'm clearly not relying in a verbatim way on them,*
10 *I'm considering them as part of an overall workup, and I also do my own*
11 *separate interpretation within the report and don't rely exclusively on a*
12 *computer report... so I think you have to look at this carefully and I think*
13 *sometimes as long as it is understood that these are computer-generated*
14 *and not gospel I think that's an appropriate use to have as one data point*
15 *and the expert can decide what weight to give it."*

16 See Plaintiffs' Ex.A (Dkt.158-1)(Williamson Depo) at 155-157 (Emphasis added).

17 Rather, Dr. Williamson's testimony and how he used the CBTIs is consistent with the
18 scholarly article Plaintiffs cite as Exhibit N (Dkt.151-14), which states in pertinent part:

19 "Regardless of scoring program used, *the generic narrative statements and*
20 *diagnostic suggestions arising from CBTIs can still be utilized as*
21 *hypotheses to be tested and supported with evidence beyond the results of a*
22 *single psychological test."*

23 See Daubert Mot., Ex.N at 210 (emphasis added).

24 Lastly, Plaintiffs incorrectly contend that he used test scores as the sole indicators
25 to characterize functioning, competence, attitude, and predisposition. Again, Plaintiffs'
26 claim on this point is false. As discussed above, Dr. Williamson relied on several sources
27 of information.

28 **C. Dr. Williamson is a Qualified Expert With Extensive Education,
Experience, and Training in Trauma and [REDACTED]**

Dr. Williamson has testified in numerous cases, and the courts have consistently
found him to be an expert who is qualified to testify on clinical psychology. No courts
have excluded his testimony. The Plaintiffs in this litigation, however, make a
perfunctory argument that he is unqualified to testify about clinical psychology, and in
doing so they misstate both the relevant facts and law. Federal Rule of Evidence 702
requires the expert to testify on matters "within the reasonable confines of his subject

1 area.” *Avila v. Willits Env'tl. Remediation Trust*, 633 F.3d 828, 839 (9th Cir. 2011)
2 (quotation marks and citation omitted). The person proffering the witness “bear[s] the
3 burden of showing that [the expert] possesses some ‘knowledge, skill, experience,
4 training, or education’ that qualifies him to give such opinions.” *A.A. v. Raymond*, 2013
5 WL 3816565, at *6 (E.D. Cal. July 22, 2013) (*quoting Thomas v. Newton Int'l Enters.*,
6 42 F.3d 1266, 1269 (9th Cir.1994)).

7 1. Dr. Williamson’s Expert Qualifications in Clinical Psychology and
8 Experience with Trauma and [REDACTED]

9 Dr. Williamson *is a clinical psychologist* with extensive experience in trauma and
10 [REDACTED], and regularly treats individuals with trauma. Williamson Decl. ¶¶ 1, 12. Plaintiffs
11 contend that Dr. Williamson must be board certified by the American Board of
12 Professional Psychology to be a clinical psychologist. *See* Williamson Daubert Mot. at
13 13, fn. 6. To support this contention, Plaintiffs rely exclusively on the declaration of Ms.
14 Dakin-Grimm—who is a party-affiliated attorney, *not* an expert psychologist, and who
15 has no relevant ability to opine on this subject. *See* Dakin-Grimm Decl. ¶ 19. Contrary to
16 Plaintiffs’ counsel, the American Psychological Association (APA) does not require nor
17 endorse any private board certifications. Williamson Dec. at ¶ 2. This is consistent with
18 Plaintiff’s expert Dr. Samuelson’s testimony, wherein she stated, “in psychology, unlike
19 medicine, you don’t have to be board certified to call yourself a sub-specialty.” *See*
20 Pinchas Decl. at Ex. 2 (Samuelson Depo) at 24:22-25.

21 Dr. Williamson is licensed by the California Board of Psychology,⁶ has been
22 licensed to practice independently as a psychologist in California⁷ for over 25 years, and
23 has worked exclusively during that period as a clinical psychologist. Williamson Decl. at
24

25 ⁶ Dr. Williamson has never described himself as being certified by any other
26 board, other than the California Board of Psychology. Williamson Decl. at ¶ 2. There are
27 many independent, private boards in the field of psychology. *Id.* For example, the
28 American Board of Professional Psychology (ABPP), the American Board of
Assessment Psychology (ABAP) and the National Academy of Neuropsychology
(NAN). *Id.*

⁷ Dr. Williamson is also licensed as a psychologist in the state of Hawaii and was
temporarily licensed in the State of Ohio. Williamson Decl. at ¶ 1.

¶¶ 1,3. Since April 2012, he has been licensed as a Qualified Medical Examiner in California specializing in Clinical Psychology, and a fully credentialed member of the National Register of Health Service Providers in Psychology, which has higher credentialing requirements that allow providers to work across state lines. *Id.* at ¶ 1. For the past fifteen years, Dr. Williamson has served, and continues to serve as a Clinical Psychological Examiner for the United States Department of Defense Medical Review Board, assessing different issues such as [REDACTED] ([REDACTED]). *Id.* at ¶ 11.

Although Dr. Williamson completed his master's degree and doctorate in educational psychology, specializing in counseling, the core of the education and clinical psychology programs were nearly identical. *Id.* at ¶ 4. The academic coursework overlapped substantially with clinical psychology, and graduates from both programs qualify for the same professional licensure: a licensed psychologist in California. *Id.* at ¶ 4. Dr. Williamson pursued a career in clinical psychology by pursuing training and internships related to clinical psychology. *Id.* at ¶ 5. In that regard, Dr. Williamson completed approximately 5,000⁸ pre- and post-doctoral training hours in *clinical* psychology, including the subspecialty of neuropsychology. *Id.* at ¶ 6. Dr. Williamson deliberately sought extensive training in different areas of clinical psychology prior to his licensure. *Id.* Many of these hours were in medical settings and mental health agencies. *Id.*

Other examples of the clinical training and experience Dr. Williamson received prior to his licensure, and related to trauma and [REDACTED], include the following:

1. Training and supervising clinical work in a homeless shelter, where he worked with homeless populations who had histories of trauma both before and while living on the streets. *Id.* at ¶¶ 7, 13. Much of the training and supervision Dr. Williamson received there was specifically directed

⁸ The California Board of Psychology only requires 3,000 hours in clinical work to sit for the psychologist license exam. *Id.* at ¶ 6.

- 1 towards evaluating and treating trauma, including [REDACTED]. *Id.* at ¶ 13.
- 2 2. Dr. Williamson also received training and conducted therapy under the
- 3 auspices of the Los Angeles County Department of Mental Health in
- 4 response to the 1991 Los Angeles riots where his team was tasked with
- 5 providing direct clinical services to individuals who suffered traumatic
- 6 stress from the riots. *Id.* at ¶¶ 7, 15. Dr. Williamson was supervised by a
- 7 clinical psychologist and given training on how to work with traumatized
- 8 individuals, emphasizing the issues in the Latino community. *Id.* at ¶ 15.
- 9 3. Dr. Williamson also worked in UCLA's neuropsychiatric institute now
- 10 renamed the Semel Institute for Neuroscience and Human behavior. *Id.* at
- 11 ¶ 7.
- 12 4. Additionally, Dr. Williamson received approximately 2,000 hours of
- 13 supervision and training by a clinical neuropsychologist, who frequently
- 14 served as a forensic expert. *Id.* at ¶ 16. In this position, Dr. Williamson
- 15 worked mostly with cases of traumatic brain injuries (TBI). *Id.* Many of
- 16 those cases also involved substantial orthopedic injuries because of
- 17 violent injuries and had comorbid diagnoses of [REDACTED]. *Id.* In general, the
- 18 cases involved quite severe trauma in adults and minors. *Id.* Since then,
- 19 Dr. Williamson has continued to work with TBI patients, including for
- 20 example, directing two therapy groups for TBI patients, one in English
- 21 and one in Spanish, within the last twelve months. *Id.*
- 22 5. Dr. Williamson also worked at Advanced Psychological Services which
- 23 was funded through the California Victims of Crime Program. *Id.* at ¶ 14.
- 24 The clinical director was a highly experienced clinical psychologist who
- 25 held trainings on treatment of trauma [REDACTED] in children and adults. *Id.* Dr.
- 26 Williamson went to external trainings related to treating victims of crime.
- 27 *Id.* The focus of the work was on violent assaults, physical and sexual
- 28 abuse, and grief, mostly with children, but also included adult victims. *Id.*

1 As a result of the foregoing experience, Dr. Williamson became a Clinical Psychologist,
2 which is the work he has done for his entire professional career.⁹ By contrast, he is not a
3 Licensed Educational Psychologist.

4 Following his licensure, Dr. Williamson served as the Director of Clinical
5 Supervision for three years, at Allcare Mission Health Center (“Allcare”) where he
6 provided direct clinical services and conducted in service trainings and supervision to the
7 interns and psychological associates about treatment of trauma and [REDACTED]. *Id.* at ¶ 10.

8 In 2018, Dr. Williamson used his experience with trauma to do volunteer work
9 with the American Red Cross in mental health disaster relief. *Id.* at ¶ 18. Dr. Williamson
10 underwent a series of their training protocols. *Id.*

11 Based on Dr. Williamson’s extensive experience, he was asked in 2021 to present
12 on a panel of experts regarding evaluation and treatment of individuals following TBIs.
13 *Id.* at ¶ 19. The presentation was titled, *Medicine for the Brain: Depression, Anxiety, and*
14 *[REDACTED] - Symptoms, Effects, and Treatment for Traumatic Brain Injury*, (TBI) to the
15 Consumer Attorneys Association of Los Angeles (CAALA). *Id.* There were four experts
16 on the panel including Dr. Williamson, a pediatric neurologist, a clinical
17 neuropsychologist, and a neuroradiologist. *Id.* They shared information about
18 multidisciplinary diagnoses and treatment of TBI including [REDACTED], depression,
19 neuropsychological insult, and neurological injuries. *Id.*

20 2. Dr. Williamson’s Frequent Court Testimony As An Expert And
21 Treating Clinical Psychologist

22 Dr. Williamson has testified both as an expert and treating clinical psychologist
23 frequently in his career. *Id.* at ¶ 20. He has testified well over 100 times, including
24

25 ⁹ The licensing for Licensed Educational Psychologists is overseen by a separate
26 board (Board of Behavioral Sciences). *Id.* at ¶ 9. Licensed Educational Psychologists are
27 also subject to a different set of license requirements. See
28 <https://www.bbs.ca.gov/applicants/lep.html>. *Id.* The California Board of Psychology
regulates and licenses psychologists, including clinical psychologists, in California. See
<https://www.psychology.ca.gov/>. *Id.*

1 Federal Court at least eight times and in multiple jurisdictions in different states. *Id.*
2 More specifically, he has been qualified to testify as an expert on trauma and [REDACTED] on
3 many occasions and has never been considered unqualified by any court or judge. *Id.*

4 For example, in one federal case from 2020, discussed in Dr. Williamson's
5 deposition, he testified as an expert clinical psychologist about a man who became
6 quadriplegic in a horrific accident. *Id.* at ¶ 21. In another federal case, Dr. Williamson
7 offered testimony about two minors, brother and sister, whose father's died while
8 interacting with law enforcement. *Id.* Their father's death was on a video that the
9 children saw and could access in the public domain. *Id.* In 2021, Dr. Williamson testified
10 in federal court in Riverside, California, where two parents witnessed their adult son,
11 who had special needs, killed by gunshot in their presence; they were both also shot and
12 seriously injured. *Id.* More recently, in October 2023, Dr. Williamson testified in a
13 highly publicized case regarding long term sexual abuse against the Moreno Valley
14 School District. *Id.*

15 3. Dr. Williamson's Awards and Recognition

16 Dr. Williamson received a special recognition from the California Psychological
17 Association (CPA) for volunteering time in the community following the terrorist attacks
18 of 9/11. *Id.* at ¶ 22. He was invited by and volunteered guidance on Spanish language
19 media outlets to advise parents to speak with (and listen to) their children about
20 psychological reactions to the attacks. *Id.*

21 In April 2023, Dr. Williamson received a five-year award of volunteer excellence
22 from the American Red Cross for providing disaster relief for mental health services. *Id.*
23 at ¶ 23.

24 Despite Plaintiffs' false claims that Dr. Williamson has zero training in trauma or
25 the treatment of traumatized children, the foregoing demonstrate otherwise. Lastly, Dr.
26 Williamson's lack of publications or memberships in certain organizations does not
27 render him unqualified. *See Luttrell v. Novartis Pharm. Corp.*, 894 F. Supp. 2d 1324,
28 1336 (E.D. Wash. 2012) (stating that "Rule 702 does not require an expert to publish

articles ... in order to qualify to give expert testimony”); *Benton v. Ford Motor Co.*, 492 F. Supp. 2d 874, 876 (S.D. Ohio 2007) (reasoning that “although things like extensive academic pedigree and prolific scholarly publication by a proffered expert are persuasive indicators of qualification, the presence or absence of such qualifications almost always bears on the weight that the jury should assign to the testimony and not on the admissibility of the testimony itself.”).

III. CONCLUSION

Defendant respectfully requests that this Court deny Plaintiffs’ *Daubert* motion as to Dr. Williamson. Dr. Williamson has clearly established that he is qualified and employed reliable principles in formulating his opinions. Further, Dr. Williamson’s report and psychological examination findings were timely disclosed, and may not properly be excluded under *Daubert*.

Dated: March 12, 2024

Respectfully submitted,

E. MARTIN ESTRADA

United States Attorney

DAVID M. HARRIS

Assistant United States Attorney

Chief, Civil Division

JOANNE S. OSINOFF

Assistant United States Attorney

Chief, Complex and Defensive Litigation Section

/s/ Christina Marquez

CHRISTINA MARQUEZ

DAVID PINCHAS

Assistant United States Attorney

Attorneys for United States of America

Certification of Compliance with Local Rule 11-6.2

The undersigned counsel of record for Defendant certifies that this brief contains 6,927 words, which complies with the word limit of Local Rule 11.6.1

/s/ Christina Marquez
CHRISTINA MARQUEZ